

## MEMORANDUM

**TO:** Members, Clark Fork Basin Water Management Task Force (Task Force)  
**FROM:** Gerald Mueller  
**SUBJECT:** Summary of the September 17, 2007 Task Force Meeting  
**DATE:** September 17, 2007

### Participants

The following people participated in the Task Force meeting:

#### *Task Force Members:*

Fred Lurie	Blackfoot Challenge
Marc Spratt	Flathead Conservation District
Nate Hall	Avista
Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Jim Dinsmore	Upper Clark Fork
Gail Patton	Sanders County Commissioner

#### *Ex Officio Member*

Sen. Verdell Jackson

#### *Public*

Dr. David Shively	University of Montana, Department of Geography
Mike McLane	Montana Department of Fish, Wildlife and Parks
Tim Bryggman	DNRC

#### *Staff:*

Curt Martin	DNRC
Gerald Mueller	Consensus Associates

### Meeting Agenda

- July 2, 2007 Meeting Summary
- Updates
  - Task Force budget
  - Task Force membership
  - Legislative Interim Water Committee
- Future Basin Water Needs
  - Mountain Water Per Customer Use Data
  - DNRC
- Basin Water Supply and Growth Conference
- Task Force Work Plan
- Next Steps
- Public Comment
- Next Meeting

### July 2, 2007 Meeting Summary

The Task Force made no change to the July 2, 2007 meeting summary.

### Updates

Task Force Budget - The budget requested by the Task Force from the legislature is as follows:

Facilitator Costs (salary and expenses) -	\$20,000
Task Force Costs (meeting costs & member mileage) -	\$5,000

Project Costs (printing, etc.) -	\$5,000
Communication/Outreach (quarterly newsletter, etc.) -	\$5,000
Conference -	\$10,000
Total -	\$45,000

Rather than a separate budget, the legislature included \$90,000 in the DNRC budget for the biennium. DNRC has now developed a contract \$40,000 contract, \$20,000 per year, for facilitator costs.

DNRC also has \$5,000 to convene a roundtable of the Clark Fork River Basin watershed groups. Mary Sexton has expressed a continuing interest in the roundtable.

Task Force Membership - Gerald Mueller reported exchanging email with DNRC Director Sexton about Task Force member appointments. Because the statute requires terms for Task Force members, all need to be reappointed. Also, Ms. Sexton has agreed to make the appointments and to appoint Ted Williams to represent the Flathead Lakers. To date, Mr. Mueller has not received written notification of the appointments.

#### Legislative Interim Water Committee

The Legislative Interim Water Committee (LIWC) met last Wednesday and Thursday in Thompson Falls. Task Force members Marc Spratt and Holly Franz attended the meeting, as did Steve Fry, Mike McLane, Curt Martin, and Gerald Mueller. Mr. Spratt, Fry, McLane, Martin, and Mueller made presentations. Mr. Mueller passed out copies of presentations which Mike McLane and he made to LIWC. He also passed out a copy of LWIC member Representative Cohenour's recommendations for prioritizing the issues on which LWIC should focus future work. See Appendix 1 for Rep. Cohenour's handout. Marc Spratt stated that the Task Force should consider how it wishes to interact with LWIC. He also summarized the meeting making the following points:

- LWIC members lack a broad background regarding how the water appropriation system works.
- At the meeting, LWIC invited presentations from people with varied expertise and experience on two general topics, the water allocation system and related technical issues.
- In his presentation, Mr. Spratt attempted to define calculable in reference to assessments of water availability.
- LWIC seemed interested in the idea of prioritizing domestic water use, which is not allowed under the present first-in-time, first-in-right prior appropriation doctrine. The idea is that because in-house water use, as opposed to outside lawn and garden watering, is negligible, domestic use might be exempted from permit requirements.
- LWIC heard a presentation from a Washington State official about how artificial storage and recharge works in that state.
- Montana does not have a system for addressing cumulative impacts of water use.
- LWIC accepts that growth is expected, but does not understand how that growth is focusing effects on the local water supply.
- DNRC and DEQ apply different pump tests to ascertain water availability. DEQ's analysis, a 24 hour pump test, is designed to see if the pumping rate can be maintained over the long term. DEQ does not assess impacts of a proposed water withdrawal on other users. DNRC does apply an adverse effects test for wells large enough to require a permit, but not for exempt wells.
- DNRC and DEQ are attempting to coordinate their reviews.
- There was considerable discussion of exempt wells. In Flathead and other urban counties, the planning and zoning process is discouraging exempt wells in favor of community systems. Counties under less growth pressure are following the traditional path in which developers rely on exempt wells to reduce permit costs and time requirements. As the growth pressure

increases, professional developers planning larger developments tend to seek annexation and community water supplies and sanitation systems.

- LWIC was interested in making permitting of community water systems easier.
- Mr. Mueller discussed the Milltown Dam water rights, in light of the pending removal of the dam.
- DNRC is interested in moving water rights permitting earlier in the subdivision process. Mr. Spratt believes that because the permitting process tends to reduce the size of proposed developments, earlier water rights may tend to involve more water than will ultimately be needed. One way to address this concern would be to base permitting on test wells rather than production wells.

*Task Force Member Comment - Rep. Cohenour has requested meetings with DNRC, DEQ, and DFWP to discuss the agencies' "wish lists" regarding water quality and quantity.*

*Comment by Curt Martin - I have been asked by John Tubbs and Rich Moy to consider how the State Water Plan might be amended to address exempt wells and conjunctive water management.*

*Comment by Mike McLane - Many of the issues addressed by LWIC and Rep. Cohenour are addressed in the Clark Fork Basin Water Management Plan. Perhaps copies of the plan could be given to LWIC members.*

*Comment by Gerald Mueller - Another issue discussed by LWIC and listed on Rep. Cohenour's priority list is water right enforcement, and the role of DNRC and individual water right holders in that enforcement.*

*Task Force Member Question - Can you tell us briefly about the Milltown Dam water right?*

Answer by Gerald Mueller - There are two water right claims associated with Milltown Dam, a hydropower generation claim and a storage claim. The hydropower claim is for a 2,000 cfs, 1.5 million acre feet per year, year-round water use with a December 11, 1904 water right. The storage right is for up to 940 cfs or enough flow to refill the reservoir at any time. The period of use of this right is also year-round and the priority date is the same, December 11, 1904. The hydropower right is filled on average only 130 days per year. The hydropower right was included in a temporary preliminary decree for one of the three basins involving Milltown Dam (middle Clark Fork, 76M). The Water Court will not take final action on the Milltown Dam water rights until all three basins involving the dam (upper Clark Fork, 76G, and the Blackfoot, 76F) are completed. The Water Court did not recognize the storage right and Montana Power Company, the owner of the dam at the time objected. The Water Court has postponed addressing the validity of a storage right associated with hydropower. Because the dam is scheduled to be removed as a part of the Superfund remediation, the purpose for the existing water right claims will cease to exist. To maintain the water rights, they will have to go through the DNRC water right change process. A consent decree has been entered into as a part of the Superfund process which obligates NorthWestern Corporation (NWC), the current dam owner, to take a series of steps. It first must appraise and attempt to sell the rights on the open market. The State of Montana has the right to approve of any sale. After a specific period, NWC must offer the rights to the State for no additional payment. The State can then accept the rights in whole or in part. If the State does not accept them, NWC must offer the rights to the United States and/or the Confederated Salish and Kootenai Tribes. If the State, the US, or the Tribes accept the rights, they cannot be converted to a consumptive use. In summary, there is currently a large, old, instream water right that may be transferred to the State, US, or the Tribes. If it is transferred, it

must remain an instream right. There are over 3,900 junior water rights above the dam. In the past, the utilities never made a call to protect their right. There is considerable interest in the fate of the Milltown Dam water right and whether a new owner would take action to enforce it. The Upper Clark Fork River Basin Steering Committee is preparing a paper on the Milltown Dam water right to identify and explore alternatives regarding the purpose and ownership of the existing water rights and the implications of the alternatives for upper basin water users.

***Task Force Homework Assignment - The Task Force agreed to consider the issues listed on Rep. Cohenour's paper and identify three issues that LWIC should focus its work on. These issues will be discussed at the October Task Force meeting at which time the Task Force will decide which three issues to recommend as top priorities for LWIC work.***

## **Future Basin Water Needs**

### Mountain Water Per Customer Use Data

At the July 2007 meeting, Arvid Hiller agreed to provide Mountain Water Company data on per customer water use information. While he was unable to attend this meeting, he had the following information sent to Mr. Mueller.

<b>Metered Class</b>	<b>Five Year Average Customer Count</b>	<b>Five Year Average Usage (100 cubic feet)</b>	<b>Ave Annual Usage Per Customer</b>	<b>Gallons Per Minute</b>	<b>Gallons Per Day</b>
Residential	10,286	1,957,785	190	0.27	389
Business	2,756	1,741,774	632	0.90	1295
Public Authority	64	462,766	7,246	10.3	14,850
Irrigation	416	283,079	680	0.97	1,393

<b>Unmetered Class</b>	<b>Five Year Average Customer Count</b>	<b>Ave Annual Usage Per Customer</b>	<b>Unmetered Multiplier</b>	<b>Estimated Total Class Usage 2004 Test Year (100 cubic feet)</b>
Residential	6,407	190	1.40	1,707,266
Business	2,756	632	1.40	139,797
Public Authority	64	680	2.00	61,680
Irrigation	416	680	2.00	585,211

### DNRC

Using a handout, Tim Bryggman presented DNRC's estimate of future water demand in the Clark Fork River basin. The handout included two memoranda which are included below as Appendix 2 and 3. The memoranda from Russell Levens, a DNRC hydrologist, calculates future basin

water demand. Mr. Levens used data from Mountain Water and two other sources as well as basin population projections based on data from the *Clark Fork Basin Water Management Plan*. He used the rate of growth reported for 1990-2000 in the *Plan* to project population levels through 2060. His estimated basin water use for municipal and industrial water uses would range from about 50,000 to 150,000 acre-feet of consumption for the 2010 to 2060 period. Non-domestic irrigation use was not included in his projection.

The second memo from Tim Bryggman to John Tubbs and Rich Moy discusses an amount of water that might be used in the Bureau of Reclamation (BOR) cost reallocation study.

Mr. Bryggman stated that based on conversations with BOR staff, he sees three options for approaching the cost reallocation water amount:

- Short term option - Should the request be limited to no more than 10,000 acre-feet for a five year period, it might support contracts between BOR and either the State or individual water users. This approach to contracting would not attract as much attention or potential opposition through the Congressional approval, NEPA, and public review process and would therefore likely be the quickest option. Long-term contracts of less than 1,000 acre-feet and five-year contracts of less than 10,000 acre-feet would be at the discretion of the BOR Regional Director. It may be possible to complete such a contract within one year.
- Intermediate option - The state would request 50,000 to 100,000 for a period such as 25 years.
- Long-term option - The state would request more than 100,000 feet for a long period such as 50 years.

The longer term options may involve water for the compact between the state and the Confederated Salish and Kootenai Tribes. At the recent Legislative Interim Water Committee meeting, John Carter, head of the Tribal Legal Department, stated that the Tribes are interested in using Hungry Horse water as part of the compact for several purposes including providing irrigation to all irrigable acres on the reservation. Assuming that there are on the order of 60,000 irrigable acres and each acre could use 2 - 3 acre-feet per acre, this purpose alone might require 120-180 thousand acre-feet.

Mr. Bryggman asked for advice from the Task Force regarding the amount of water that the state should be addressed in the cost reallocation study.

*Task Force Member Comment - The disadvantage to taking the shorter-term approach involving lesser amounts of water is that the state may not get a second bite from the apple. In other words, it is likely that the constraints on the operation of Hungry Horse are will increase with time due to endangered species and other downstream concerns. Ten to twenty-five years from now, there may be no more water available for a BOR contract.*

*Task Force Member Comment - We will not get one more drop of water than we request. Water for Montana water users has not been considered in past decisions about the operation of Hungry Horse and allocation of water from it. Given the existing competition and constraints on the Columbia River system, I am not convinced that asking for a smaller amount of water will necessarily avoid attracting attention from downstream interests. I advocate asking for more rather than less water.*

*Task Force Member Comment - My numbers may not be correct, but if household (inside the house) water is 0.3 acre feet per year and there are three people per household, then 100,000 acre-feet would only support an additional 100,000 people. Clark Fork population growth is likely to exceed this amount in the foreseeable future.*

*Task Force Member Comment - DFWP has been working for years on rule curves in Hungry Horse to benefit native fish. An additional large draw down during the irrigation season would likely conflict with this objective.*

*Task Force Member Comment - Additional water for domestic uses may not conflict so much with native fish needs, because domestic use is year round rather than concentrated during the summer.*

***Task Force Recommendation - Task Force members agreed that DNRC should seek larger rather than smaller volumes of water from Hungry Horse. For the purpose of the reallocation study, DNRC should request at least 100,000 acre-feet. Also, DNRC should visit with the Tribes about this request before making it. As much as possible, the state and the Tribes should have a shared strategy towards use of Hungry Horse water.***

## **Basin Water Supply and Growth Conference**

Gerald Mueller summarized his actions since the July Task Force meeting regarding the conference. Based on comments he received from some of the Task Force conference planning committee members (Matt Clifford, Marc Spratt, Curt Martin, David Shively, and Gerald Mueller), he revised the conference concept paper. See Appendix 4 below. He then met with Harold Blattie, Executive Director of the Montana Association of Counties (MACO), and DEQ staff, Steve Kilbreath and Eric Regensburger, to solicit their organization's or agency's participation in the conference as co-sponsors. Mr. Blattie and Kilbreath and Regensburger responded positively to the idea of the conference and committed to seeking approval from their appropriate authorities to be co-sponsors. Assuming that MACO and DEQ agree to lend their names and support to the conference, we will add them to the planning committee. The planning committee will then meet to refine the concept paper which will then be brought back to the Task Force.

## **Public Comment**

There was no additional public comment.

## **Next Meeting**

The next meeting was scheduled for Monday, October 1, 2007 at the DFWP office in Missoula.

## **Appendix 1**

### **Water Policy Committee – Recommendations for prioritization – Rep. Cohenour**

1. Water Quality Act Changes or Issues
  - a. Discharge
    - i. Surface water additions to ground water and public water supply issues
    - ii. Mixing zones versus nondegradation
    - iii. Size of mixing zone
    - iv. Mixing zones and well 100' radius cannot expand past property boundaries
    - v. Preconstruction inspection for septic location (stakes)
  - b. Community systems
    - i. Opportunities for cost sharing
  - c. Introduction of surface water to ground water
    - i. Treatment requirements
    - ii. Disinfectant byproducts
    - iii. Need for overlap between DNRC and DEQ
2. Definitions
  - a. Community well -- compare DNRC definition to DEQ definition. Do they need to be the same?
  - b. Public water supply definition
  - c. Municipal use
  - d. Combined appropriation
3. Enforcement/Monitoring
  - a. Water rights
  - b. Mitigation/aquifer recharge
  - c. Water quality
4. County Authority
  - a. Water quality
  - b. Legal availability – water rights before final plat
5. Exempt Wells
  - a. Subdivision regulations
  - b. Legal availability – agencies work together
  - c. Water marketing options
6. Incentives
  - a. Promote community water and sewer
  - b. Cost sharing state/county/industry
7. Water and sewer districts
  - a. Private vs. public
  - b. Oversight

8. Prioritize or provide new money for grant and loan programs for community water and sewer projects.
9. Subdivision size and type rather than just size to try to address applications submitted right under the cutoff.
10. Well Locations
  - a. Well Drillers Rules
  - b. Well Permitting through counties
  - c. Preconstruction inspection (pin location for well)
11. Subdivision applications
  - a. Regardless of water source (exempt wells, community well, etc) require a hydrogeologic assessment of aquifer
  - b. Require monitoring wells and instrumentation of wells
  - c. Require pump testing to design capacity (for example if developer needs 100 gpm the developer must conduct pump tests showing that the well(s) is capable of meeting that need – either 1 well pumping 100 gpm or 20 wells pumping 5 gpm, etc.)
12. Aquifer Storage and Recover
  - a. Impact on Public water supplies

## Appendix 2

To: Tim Bryggman  
From: Russell Levens  
Subject: Water needs to satisfy future growth in the Clark Fork River Basin

The purpose of this evaluation is to estimate potential water needs for the Clark Fork River drainage using standard water use estimation methods and information on current water use within the Clark Fork drainage and in other areas of Montana. This evaluation relies on assumptions regarding the magnitude and pattern of future development, and water diversion and consumption for household, business, public and irrigation purposes.

The initial estimate of future residential water use and consumption in Table 1 is based on the following assumptions.

- The number of households in the Clark Fork basin will increase by 224,291 between 2010 and 2060.
- In-house water use is 230 gallons per day per household (100 gallons per day per person multiplied by 2.3 persons per household).
- Consumption of water used indoors is 12 percent based on 2 percent evaporation indoors and 10 percent evaporation during waste treatment and disposal.
- Irrigation demand for lawn and garden irrigation is 16.2 inches per year based on net irrigation demand obtained from the Montana Irrigation Guide.
- Lawn and garden irrigation efficiency is 60 percent.

For comparison, water use data from Mountain Water Company, which serves an area of approximately 130 square miles surrounding Missoula, the Goodan-Keil Subdivision near Missoula, and Summer Ridge subdivision near Bozeman are presented in Table 2. Residential water use in the two subdivisions is greater than residential use in the Mountain Water service area, probably because of larger lot sizes and associated lawn irrigation. However, Mountain Water serves business, irrigation, and public customers such as schools and parks that use additional water per household within their service area. Water uses for business and public purposes are added to residential uses in Table 2 to provide an estimate of overall water use per household. Use by Mountain Water irrigation customers is not included in these estimates.

The Mountain Water service area encompasses rural and urban areas in the Missoula Valley (Table 3); however they primarily distribute water within the City of Missoula. Still the land pattern in the Mountain Water service area probably is good indication of future growth patterns in other valleys within the Clark Fork drainage. The degree to which new water uses replace existing agricultural irrigation uses, and the potential for industries or businesses that use and/or consume significant amounts of water are the main uncertainties.

Table 1. Calculated water use per household and for projected population growth.

	Acre-Feet Per Year	
	Per Household	Per 224,291
<b>Household + 1/4 acre lawn</b>		
Diversion (residential)	0.82	183,896
Consumption	0.37	82,580
<b>Household + 1/2 acre lawn</b>		
Diversion (residential)	1.38	309,963
Consumption	0.71	158,220

Table 2. Water use per household and for projected population growth from water-use data.

	Acre-Feet Per Year	
	Per Household	Per 224,291
<b>Mountain Water Company</b>		
Diversion (residential uses)	0.50	113,050
Consumption	0.24	54,264
Diversion (all uses)	0.80	174,441
Consumption	0.29	62,071
Diversion (all uses + unaccounted)	1.43	321,550
Consumption *	0.67	150,336
<b>Goodan-Keil Subdivision</b>		
Diversion (residential)	0.96	216,116
Consumption	0.46	103,736
<b>Summer Ridge Subdivision</b>		
Diversion (residential)	0.64	143,546
Consumption	0.35	78,502

\* unaccounted for use is assumed to be for irrigation at 60% efficiency

Table 3. Percent property type for parcels within the Mountain Water Company service area.

Property Type	Rural	Urban	Other	All
<b>agricultural</b>	35%	0%	0%	35%
<b>commercial</b>	4%	3%	0%	7%
<b>condominium</b>	0%	0%	0%	0%
<b>exempt</b>	0%	0%	22%	22%
<b>farmstead</b>	8%	0%	0%	8%
<b>industrial</b>	0%	0%	0%	1%
<b>non-valued</b>	0%	0%	0%	0%
<b>residential</b>	15%	4%	0%	19%
<b>townhouse</b>	0%	0%	0%	0%

<b>utility</b>	0%	0%	0%	0%
<b>vacant</b>	7%	1%	0%	8%
<b>centrally assessed</b>	0%	0%	0%	0%
	69%	8%	22%	100%

**Appendix 3**  
**MEMORANDUM**

TO: John Tubbs  
Rich Moy  
FROM: Tim Bryggman  
DATE: September 12, 2007  
RE: Hungry Horse Contracting

Per your request, I am enclosing the estimate of future water demand in the Clark Fork River basin. The estimate is intended to guide the selection of a volume of water to request as the basis for BOR's cost reallocation analysis for Hungry Horse Reservoir. The cost reallocation analysis is an initial requirement for pursuing a contract for water from BOR's Hungry Horse Reservoir.

**Background**

The Clark Fork River Basin Task Force completed the Clark Fork Watershed Management Plan in 2004 to address concerns over increasingly scarce water supplies relative to rapidly increasing demands for water in western Montana's Clark Fork basin. The Plan was adopted with modifications as a State Water Plan section in 2005. Among its twenty-eight recommendations, the Plan included Recommendations 6-1 and 8-4 which requested that DNRC explore options for contracting for water from BOR's Hungry Horse Reservoir to be leased to Montana water users.

In House Joint Resolution No. 3, the 2005 Legislature urged DNRC to "enter into negotiations with the United States Bureau of Reclamation to determine the availability and cost of water stored behind Hungry Horse Dam" and to report to the Environmental Quality Council and the Clark Fork Task Force "the results of these negotiations." The "Report To The Environmental Quality Council And The Clark Fork River Basin Task Force On The Availability And Cost Of Water From Hungry Horse Reservoir" was completed in December 2006. The report provides a summary of the results of those negotiations to that point, an overview of the issues prompting those negotiations, a presentation of the process required for contracting for water from Hungry Horse Reservoir, and information regarding the potential availability and cost of water from Hungry Horse Reservoir.

**Cost Reallocation**

One of the initial steps required in the contracting process would be the completion of a cost reallocation analysis by BOR to assign project costs to authorized, new purposes under the anticipated new operation criteria. BOR estimated that the cost reallocation analysis would take about two years and cost \$260,000. Costs of the analysis are to be borne by the party requesting the contract—presumed to be the State of Montana. The 2007 Legislature appropriated \$260,000 to DNRC to pay for BOR's cost reallocation analysis for Hungry Horse Reservoir.

To begin the cost reallocation analysis, BOR will require a proposed project use and an associated annual water volume on which to base the analysis in addition to payment for the cost of the analysis. It has been proposed that Hungry Horse water would most likely be used for municipal and industrial purposes.

**Congressional Approval**

Pursuant to the 1977 McGovern Amendment, Congressional approval is required either through an affirmative act or through “no opposition” to allocate costs to a new purpose. According to BOR personnel, Congressional approval may not be required prior to a cost reallocation analysis as long as payment for the analysis has been provided. One example of such Congressional approval is a bill passed in 2006 authorizing the reallocation of costs for the Pactola Dam and Reservoir near Rapid City, South Dakota (see attached). Discussions with the Montana Congressional delegation should be initiated to discover how best Congressional approval might be obtained for reallocating costs for Hungry Horse.

### **Water Volume Request**

DNRC estimated potential water demands for the Clark Fork basin relying on standard water use estimation methods, current water use information, and various assumptions regarding potential water demand. The estimated basin population increase through the year 2060 is a projection of the rate of population increase in the basin between 1990 and 2000. The estimates of basin water demand are contained in the attached memo by Russell Levens. The estimates range from 54 kaf for water consumption based on data for Mountain Water Company residential customers to 322 kaf based on water diversions for all Mountain Water Company uses. The choice between estimates based on consumed or diverted water would require a more specific understanding regarding the nature and management of a potential Hungry Horse water contract.

Contracting arrangements for water from BOR projects are numerous and diverse and contract flexibility may potentially be useful in addressing any of a variety of future basin issues. Based on conversations with BOR personnel, it would appear that requesting a cost reallocation analysis and contract for a water volume of less than 100 kaf would be less likely to attract opposition through the Congressional approval, NEPA, and public review processes. Selecting a water volume between 50 and 100 kaf for the cost reallocation analysis may be advisable.

### **Other Contracting Options**

Long-term allocations of less than 1,000 af and five-year allocations of less than 10,000 af are subject to the discretion of the Regional Director. Additionally, it appears that temporary contracts for more than 10,000 af may be available through the Water Contracting Group at the Denver BOR office. These contracts take about one year to complete and require NEPA review.

### **Next Steps**

The next steps in pursuing a contract for water from Hungry Horse include requesting and funding a cost reallocation analysis for a particular volume of water, investigating the process of obtaining Congressional approval for a new cost reallocation, preparing for the other processes required to obtain a contract, refining the notion of integrating Hungry Horse water into water management in the basin, and learning more about the details of other contracting options for Hungry Horse water.

#### Appendix 4

## Water Supply and Growth in the Clark Fork River Basin

A Conference Cosponsored by:

Clark Fork River Basin Task Force

Montana Department of Natural Resources and Conservation

Montana Department of Environmental Quality

Montana Association of Counties

University of Montana Department of Geography

### Purpose

The Clark Fork River basin is facing rapid population and economic growth. This growth will make new demands on the basin's water supply. Historically, when more water was needed, we diverted more of it from our rivers, streams and lakes, or we dug new wells. Our water allocation system developed to allow additional development. Recent regulatory and court decisions pose new challenges both to new water development in the basin and the allocation system itself. This conference will explore the nature of these challenges and discuss ways to meet it.

### Date

Mid-March 2008

### Place

University of Montana, Missoula, Montana

### Target Audience

Local, state and tribal officials involved with responding to and/or managing growth and allocating and managing the basin's water supply as well as people and organizations interested in the nexus of growth and water supply issues. A specific list of the targeted audience includes: Tribal and local government officials (county commissioners, mayors, and tribal and city council members) and staff (city managers, city/county/tribal planners, etc.), state and tribal water management and planners, conservation districts, real estate agents, consultants, water users (irrigation districts, hydropower operators, water utilities, etc.), fish and wildlife managers, conservation/environmental organizations, academics (faculty and students), and interested basin residents.

### Suggested Agenda

#### Day 1 - Setting the Stage

11:00 am Registration

1:00 pm Welcome and Introduction (Gerald Mueller) (15 minutes)

1:15 pm Water law primer (John Tubbs, DNRC Water Resources Administrator) (20 minutes)

- State ownership and allocation of water
- First-in-time, first-in-use

- Tribal water rights
- 1:35 pm Basin water supply facts (Marc Spratt, Clark Fork Task Force Member & RLK Hydro) (20 minutes)
  - Clark Fork River basin water balance
  - Water use
- Historic (surface water)
- Recent (ground water)
- 1:55 pm Recent water-related legal rulings (Tim Hall, DNRC Chief Legal Council)(20 minutes)
  - Thompson River Cogeneration water right (implication - high hurdle for new surface water right)
  - TU vs. DNRC (implication - surface and ground water interconnected)
- 2:15 pm Break (15 minutes)
- 2:30 pm Basin population and economic growth
  - Demographics - Larry Swanson, Center for the Rocky Mountain West (20 minutes)
  - Economy - Dick King, Missoula Area Economic Development Council (20 minutes)
- 3:10 pm Water use projection (Arvid Hiller, Mountain Water Company or Tim Bryggman, DNRC Water Management Bureau Economist) (30 minutes)
- 3:40 pm Discussion (50 minutes)
  - Conference participant questions and comments
- 4:30 pm Social and No-host bar

## Day 2 - Growth and Water Supply Planning and Regulation

- 8:00 am Registration and Continental Breakfast (30 minutes)
- 8:30 am Welcome and Introduction (Gerald Mueller) (15 minutes)
- 8:45 am Planning for growth (75 minutes)
  - Local government planning tools and their relation to water supply – Myra Schultz and Michael Kakuk
    - County growth policies
    - Zoning, critical area ordinances, and subdivision regulations
  - DEQ subdivision and public water supply regulations - Steve Kilbreath, DEQ Subdivision Section Supervisor, and Joe Meek, DEQ Source Water Program Manager

- Exempt wells
- Public water supply systems
- Participant questions and comments

10:00 am Break

10:15 am Managing the Water Supply (75 minutes)

- DNRC water right regulation - Bill Schultz, DNRC Regional Water Resources Manager
  - Water availability analysis (physical and legal)
  - Coordinated surface and ground water regulation
  - Ground water permit exemptions
- Best practices for water use (Peter Nielson, Missoula City-County Health Department Environmental Health Unit Supervisor)
  - Individual vs. community wells
  - Individual septic vs. community sewer systems
  - Improved efficiency
- Participant questions and comments

11:30 am Lunch (75 minutes)

1:00 pm Potential Sources of Water for Growth - Task Force member (60 minutes)

- No existing water reservation
- Existing water rights
- Hungry Horse contracts
- Participant questions and comments

2:00 pm Break (15 minutes)

2:15 pm Improved Local, State, and Tribal Water Supply and Growth Planning - Participants will break into facilitated groups to discuss needs and ideas for improving planning and coordination (45 minutes)

3:00 pm Improved Local, State, and Tribal Water Supply and Growth Planning - Full group discussion (90 minutes)

4:30 pm Wrap Up - Task Force member (30 minutes)

5:00 pm Adjourn

# **July - September Quarterly Report Appendix 1**

## **Report to Interim Water Policy Committee**

By

The Clark Fork River Basin Task Force

September 13, 2007

### **I. Report Outline**

- Brief Introduction to the Clark Fork Task Force and Clark Fork Basin Watershed Management Plan
- Basin Water Supply Challenge
- Hungry Horse Initiative
- Water Supply and Growth Conference

### **II. Clark Fork Task Force**

- Created in 2001 pursuant to a state statute (85-2-350).
- Mandate - Prepare a water management plan for the Clark Fork River basin that identifies options to protect the security of water rights and provide for the orderly development and conservation of water in the future.

### **III. Clark Fork Task Force Members**

- Members by statute must be broadly representative of the basin's watersheds and water interests.
- Initial members were self-selected.
- Salish and Kootenai Tribes must have the opportunity to appoint a member.
- DNRC is the entity designated by Governor Schweitzer to ensure that all watershed and viewpoints within the basin are adequately represented on the task force.
- Active members include representatives of basin local governments, conservation districts, irrigation districts, watershed groups, hydropower utilities, a municipal water utility, and conservation/environmental organizations.
- 3 legislators have been ex officio members.
- DNRC has staffed and hired a facilitator.

### **IV. Clark Fork Basin Watershed Management Plan**

- Clark Fork Basin Watershed Management Plan
  - Adopted September 04
  - Largely adopted into State
  - Water Plan January 05

### **V. Key Plan Findings**

- Basin faces a water supply challenge.
- No water reservation in the basin setting aside water for future use.
- Lower basin hydropower water rights are not filled most of the time.
- Except during periods when the hydropower rights are filled, it is unlikely that surface water and ground water directly connected to surface water is legally available in the basin for future appropriation.
- Water use based on a water right junior to the hydropower rights are at risk much of the time.
- Ground water is growing in importance as a source of water supply in the basin.
- Acquiring more ground water data is crucial to future water management.

### **VI. DNRC Thompson River Lumber Water Right Decision**

- DNRC's December 2006, denial of a permit for new surface water right for Thompson River confirms Plan finding about the absence of legally availability water in basin.
- Technically the entire basin is not closed, but DNRC has said that applicants face a high hurdle to meet the burden of proving the legal availability of water and that the existing hydropower water rights will not be adversely affected.

#### **VII. Plan Recommendation**

- The State of Montana should seek a block of water in Hungry Horse Reservoir that it might lease to basin water users to support new uses and to protect junior users against a water rights call by hydropower utilities.
- The State should open discussions with the USBOR to determine the availability and cost of temporary and long-term contracting options, and to determine a quantity of firm storage available from Hungry Horse Reservoir for consumptive water use in Montana.

#### **VIII. 2005 Legislative Actions**

- Passed HJ 3 urging DNRC to enter into negotiations with the US Bureau of Reclamation to determine the availability and cost of water stored behind Hungry Horse Dam for which the State of Montana might contract to support existing water use and future water development in the Clark Fork River basin.

#### **IX. 2007 Legislative Actions**

- SB 376 revised state water marketing law to:
  - Remove restrictions on the state's ability to contract for water in federal reservoirs; and
  - Increase the maximum of water that the state can lease for beneficial uses in Montana from federal reservoirs from 50,000 to 1 million acre-feet.
- Appropriated \$260,000 to pay for the BOR's first contracting step, reallocating Hungry Horse project costs to three new water uses, municipal, industrial, and irrigation, in addition to the two existing purposes, hydropower and flood control.

#### **X. Current Hungry Horse Actions**

- DNRC is presently determining how much water the state should request from BOR to meet future basin needs.
- DNRC has also been discussing the contracting process with BOR and considering how to convince it to make necessary studies a priority.

#### **XI. Meanwhile Other States are Not Waiting**

- In February 2006, Washington passed legislation to develop up to 1 million acre-feet of new water supplies in the Columbia basin for both consumptive and instream uses.
- The 2007 Oregon legislature passed a bill directing the Oregon Water Resources Department to issue permits to appropriate up to 200,000 acre-feet per year of water from the Upper Columbia River for use in Columbia Basin for use in lieu of ground water to recharge or replenish ground water in critical ground water areas or to provide additional water for use by municipal corporation.
- It is possible that this additional water development in Washington and Oregon may come at the expense of Montana water uses provided by Hungry Horse and Libby Dams.

#### **XII. Water Supply and Growth Conference**

- The Task Force is planning a conference for March 2008 to explore issues surrounding the basin's water supply and growth.